

FOX ROTHSCHILD LLP

Daniel F. Coughlin, Esquire (DC5830)

John Skinner, Esquire (JS9427)

100 Park Ave., Suite 1500

New York, New York, 10017

(212) 878-7900

Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MODAVOX, INC.

Plaintiff/Counterclaim
Defendant

v.

TACODA, INC.

Defendant/Counterclaim
Plaintiff.

Civil Action No. 07-CV-7088(CM)

ANSWER TO COUNTERCLAIMS

DEMAND FOR JURY TRIAL

MODAVOX, INC.'S ANSWER TO COUNTERCLAIMS

Counterclaim Defendant Modavox, Inc., (“Modavox”) by its attorneys answers Tacoda, Inc.’s Answer to the Counterclaims of Counterclaim Plaintiff Tacoda, Inc. (“Tacoda”) as follows:

COUNTERCLAIMS

27. Modavox admits that paragraph 27 of the Counterclaims states allegations for declaratory judgment against Modavox as a counterclaim defendant.

28. Modavox admits that the Counterclaims are for declaratory judgment alleging noninfringement and invalidity of U.S. Patent No. 6,594,691 (“the ‘691 patent”) and U.S. Patent No. 7,269,636 (“the ‘636 patent”), but otherwise denies any allegations of non-infringement and invalidity.

THE PARTIES

29. Modavox admits that paragraph 29 of the Counterclaims states facts admitted in .Paragraph 2 of Answer.

30. Modavox admits that it is a Delaware Corporation, but denies that its principal place of business is at 4636 University Drive.

31. With respect to the first sentence of paragraph 31 of the Counterclaims, Modavox admits that the Counterclaims bring an action under 28 U.S.C. § 2201 involving allegations of noninfringement and invalidity of the ‘691 patent and the ‘636 patent under 35 U.S.C. § 101 et seq. With respect to the second sentence of paragraph 31 of the Counterclaims, Modavox further admits that this action arises under 35 U.S.C. § 101 et seq. and that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a). Modavox otherwise denies all other allegations in paragraph 31 of the Counterclaims.

32. Modavox admits paragraph 32 of the Counterclaims.

33. Modavox admits paragraph 33 of the Counterclaims.

BACKGROUND

34. Modavox refers to and incorporates herein the responses of paragraphs 27-33 above.

35. Modavox admits paragraph 35 of the Counterclaims.

36. Modavox admits paragraph 36 of the Counterclaims.

COUNT 1

Declaratory Judgment of Noninfringement of U.S. Patent No. 6,594,691

37. Modavox refers to and incorporates herein the responses of paragraphs 27-36 above.

38. Modavox admits paragraph 38 of the Counterclaims.

39. Modavox admits paragraph 39 of the Counterclaims.

40. Modavox denies all allegations in paragraph 40 of the Counterclaims.

41. Paragraph 41 of the Counterclaims is a request for declaratory judgment to which no response is required. To the extent that any response is required, Modavox admits that Tacoda is seeking a declaratory judgment from this Court and that this declaratory action proceeds under Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. § 2201, but Modavox otherwise denies all other allegations in paragraph 41 of the Counterclaims, including those alleging that Tacoda is not infringing the '691 patent and those alleging Tacoda is entitled to any declaratory judgment thereto or other declaratory relief.

COUNT 2

Declaratory Judgment of Invalidity and Unenforceability of U.S. Patent No. 6,594,691

42. Modavox refers to and incorporates herein the responses of paragraphs 27-41 above.

43. Modavox denies all allegations in paragraph 43 of the Counterclaims.

44. Paragraph 44 of the Counterclaims is a request for declaratory judgment to which no response is required. To the extent that any response is required, Modavox admits that Tacoda is seeking a declaratory judgment from this Court and that this declaratory action proceeds under Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. § 2201, but Modavox otherwise denies all other allegations in paragraph 44 of the Counterclaims, including those alleging the '691 patent to be invalid and/or unenforceable.

COUNT 3

Declaratory Judgment of Noninfringement of U.S. Patent No. 7,269,636

45. Modavox refers to and incorporates herein the responses of paragraphs 27-44 above.

46. Modavox admits that the USPTO duly issued U.S. Patent No. 7,269,636, but denies that the title of the patent is as stated in Paragraph 46 of the Counterclaim.

47. Modavox admits paragraph 47 of the Counterclaims.

48. Modavox denies all allegations in paragraph 48 of the Counterclaims.

49. Paragraph 49 of the Counterclaims is a request for declaratory judgment to which no response is required. To the extent that any response is required, Modavox admits that Tacoda is seeking a declaratory judgment from this Court and that this declaratory action proceeds under Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. § 2201, but Modavox otherwise denies all other allegations in paragraph 49 of the Counterclaims, including those alleging that Tacoda is not infringing the '636 patent and those alleging Tacoda is entitled to any declaratory judgment thereto or other declaratory relief.

COUNT 2

Declaratory Judgment of Invalidity and Unenforceability of U.S. Patent No. 7,269,636

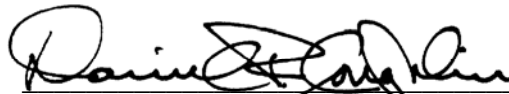
50. Modavox refers to and incorporates herein the responses of paragraphs 27-49 above.

51. Modavox denies all allegations in paragraph 51 of the Counterclaims.

52. Paragraph 52 of the Counterclaims is a request for declaratory judgment to which no response is required. To the extent that any response is required, Modavox admits that Tacoda is seeking a declaratory judgment from this Court and that this declaratory action proceeds under Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. § 2201, but Modavox otherwise denies all other allegations in paragraph 52 of the Counterclaims, including those alleging the '636 patent to be invalid and/or unenforceable.

DATED: November 8, 2007

Respectfully submitted,



Daniel F. Coughlin, Esq. (DC5830)

John J. Skinner, Esq. (JS9427)

Fox Rothschild LLP

100 Park Ave., Suite 1500

New York, New York 10015

Telephone: (212) 878-7904

Facsimile: (212) 692-0940

Attorneys for Plaintiff and Counterclaim
Defendant, Modavox, Inc.